



# State of Idaho Council for the Deaf and Hard of Hearing

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## ACCESS TO EMPLOYMENT

<http://www.eeoc.gov/facts/deafness.html>

### TITLE I EQUAL EMPLOYMENT OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

A Guide for Provisions Relating to Persons Who are Deaf or Hard of Hearing.

THESE PROVISIONS OF THE ADA ARE EFFECTIVE JULY, 26, 1992 for employers with 25 or more employees and on January 26, 1994 for Employers with 15 or more employees. In Idaho there is also a state law prohibiting discrimination in all phases of the employment relationship including on the basis of disability. Idaho law prohibiting discrimination reaches even small employers, those with at least 5 employees.

Under the ADA employers cannot discriminate in their application or employment practices against a qualified individual with a disability. If necessary the employer must provide a reasonable accommodation for the person to perform the essential functions of the job unless this accommodation would cause an undue hardship on the employer. (29 Code of Federal Regulations Part 1630)

To more fully understand how this law can help persons who are deaf or hard of hearing apply for jobs and get the accommodations they need, the key words are defined in the following sections.

#### Disability

1. A physical or mental impairment that substantially limits one or more of the major life activities on an individual. (29 CFR 1630.2(g))

Major life activities means: functions such as: (29 CFR 1630.2(i))

caring for oneself

performing manual tasks

seeing

walking

hearing

speaking

breathing

learning

working

Substantially limits means: (29 CFR 1630.2(j))

- a. unable to perform, or
- b. significantly restricted from performing

A person who is deaf meets the definition of a person with a disability. A person who is hard of hearing to the extent that they are significantly restricted from hearing also meets the definition. A person who is hard of hearing but is not significantly restricted from hearing does not meet this definition of disability except in the following two examples.

- 2. A record of such an impairment means that the person has a history of, or has been classified as having a hearing impairment which substantially limited hearing.
- 3. Being regarded as having such an impairment can mean:
  - a. The person has a hearing problem that doesn't limit their hearing much but they are treated as if their hearing is substantially limited.
  - b. Has a hearing impairment which is only limiting because of the attitude of others.
  - c. Has no hearing impairment but are treated as if they did.

The definition of disability covers not only those who currently have a substantial hearing loss but those who are discriminated against because they are treated as if they did.

Qualified Individual with a disability means:

The individual is either deaf or hard of hearing and has the skill, experience, education, and other job related requirements of the employment position to perform the essential functions of the job, either with or without reasonable accommodation. (29 CFR 1630.2(m))

Essential functions of the job mean: (29CFR 1630.2 (n))

They are fundamental duties of the job. They may be considered as essential because:

- a. The reason the position exists is to perform this function and thus it is essential.
- b. There are only a few employees that can perform this function and thus it is essential.
- c. The function is highly specialized and thus essential.

The employer defines the essential functions of the job based on:

The employer's judgment

The job description

The amount of time spent on the function

The consequences of not performing the function

The terms of a collective bargaining agreement

The current functions of other incumbents on that job

Reasonable accommodation may include:

- Making facilities accessible with TDDs
- Restructuring the job to eliminate duties
- Getting amplified phones or other devices
- Providing interpreters for employee meetings and day to day work situations

The employee should work with the employer to determine the appropriate reasonable accommodation.

Undue Hardship (29 CFR 1630.2(p))

Undue hardship means that providing the reasonable accommodation would cause significant difficulty or expense to the employer. The following factors are considered:

- a. The nature and cost of the accommodation taking into account the tax credit and deductions available and the overall financial resources of the employer in relation to the cost of the accommodation.
- b. The size of the business, number of location and type of facilities.
- c. The type of operation of the business.
- d. The impact of the accommodation on the business.

## **WHAT DOES THIS REQUIREMENT MEAN TO A PERSON WITH A HEARING IMPAIRMENT?**

First, the person with the hearing impairment must meet the definition of being disabled that is they must be substantially limited in their ability to hear or be treated as if they are.

Second, the person must be qualified for the job. Do they have the skills, abilities, knowledge, and education for the job? If the job is mainly typing and requires the person to type 70 words a minute, they must be able to do so.

Third, can they perform the essential functions of the job? If they can either with or without an accommodation then they can not be discriminated against.

Persons who are deaf or hard of hearing should be familiar with the requirements of the ADA as they apply to the employment situation. They should make potential employers aware of any reasonable accommodation they need to complete the job application process. They should understand the essential functions of the job. If they are already employed and in need of an accommodation, they should discuss their need with their employer and request the reasonable accommodation. It is the responsibility of the employee to make their employer aware of their need for an accommodation and to then work with the employer to determine a reasonable accommodation.

**For information on job accommodations:**

JOB ACCOMMODATION NETWORK

West Virginia University

809 Allen Hall, P.O. Box 6123

Morgantown, West Virginia 26506-61213

1(800) 526-7234 V/TDD

For assistance with employment problems contact the Idaho Human Rights Commission at 334-2873 V or 334-4751 TDD.

For more information on ADA requirements contact the Council.